

The complaint

Mr and Mrs H complain about a reviewable whole of life policy they hold with Aviva Life & Pensions UK Limited. They're unhappy that the sum assured has reduced over time and would like the original sum assured reinstated.

What happened

Mr and Mrs H have held their Prime Life Policy, a type of reviewable whole of life policy, since 1994. It initially provided a sum assured of £50,000 for monthly premiums of £40.22. The premiums were set to increase by 10% per year compound for the first five years of the policy so by the first review in 2004, they had risen to £62.85.

There were no further changes until the policy failed the 2018 review. Aviva wrote to Mr and Mrs H explaining that the level of premium being paid was no longer sufficient to maintain the sum assured. As a result, the sum assured would reduce from £50,001 to £18,095. Alternatively, Mr and Mrs H could increase their premiums to £166.70 and keep the higher sum assured.

The policy failed another review in 2019, and the sum assured reduced to £15,209 as Mr and Mrs H didn't opt to increase their premiums. The policy also failed the 2020 review and the sum assured reduced to the minimum guaranteed benefit of £13,984.

Mr and Mrs H complained to Aviva in 2021 as they were unhappy with the policy reviews and the decrease in the policy's sum assured. However, Aviva didn't uphold their complaint and wrote to Mr and Mrs H explaining how the policy worked. They said, in summary, that as the life assured got older the cost of providing cover increased which had resulted in the need for higher premiums or a reduction in the sum assured. Mr and Mrs H didn't accept Aviva's findings and asked for our help with the matter.

The complaint was considered by one of our investigators who thought it should be upheld. He believed Aviva hadn't provided Mr and Mrs H with fair, clear and not misleading information about the policy, specifically in relation to the costs of the policy and potential changes in might need over time to maintain the sum assured. If they had provided this level of information to Mr and Mrs H, then he thought it was likely that they would have surrendered the policy in 2009 and taken out cover elsewhere. So, in order to put things right Aviva needed to pay Mr and Mrs H the policy's 2009 surrender value plus interest.

Aviva accepted the investigator's findings but noted that the policy's current surrender value was higher than the redress that had been proposed, therefore Mr and Mrs H hadn't lost out. However, Mr and Mrs H didn't think the redress that had been put forward was fair. This was because they wanted the policy's original sum assured of £50,000 to be reinstated.

The investigator wasn't persuaded to change his opinion, so the complaint was passed to me to decide. I recently issued a provisional decision where I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint."

Having done so, I don't think the complaint should be upheld and I will now explain why. In making my decision I've considered if Aviva met their regulatory obligations and I've set out below what I consider to be the relevant standards I've taken into account when making my decision:

- *The FCA's Principles for Businesses, in particular Principle 6 and Principle 7;*
- *The FCA's Conduct of Business Sourcebook (COBS), in particular COBS 2.1.1R(1) and COBS 4.2.1R(1)*
- *The FCA's Final Guidance on the "Fair treatment of long-standing customers in the life insurance sector" (FG16/8).*

I've considered Mr and Mrs H's comments about whether or not the policy offered a fixed sum assured for a fixed premium. I appreciate that they've pointed to the policy schedule they were given which states that the policy had a guaranteed sum assured of £50,000. But the documentation I've been provided with e.g. the fact find that was completed prior to taking out the policy and a letter from 1994 all set out that they were made aware that the policy was only guaranteed for the first 10 years and would then be subject to reviews where the sum assured could be amended.

Taking this into account, I don't think that Aviva acted unfairly when they reviewed the policy and proposed the changes that they did. It may be helpful if I explain how RWOL policies broadly work in practice. The cost of providing cover isn't fixed and instead increases over time as the lives assured get older. At the outset, when charges are relatively low, the difference between the premiums being paid and the charges results in an investment pot being built up.

Over time, businesses will undertake reviews to ensure that the policy can continue to provide the chosen level of cover. They will look at a number of different factors such as the size of the investment pot, current mortality rates and investment performance. If they decide the policy isn't sustainable at its current premium, the consumer will usually be offered the option of reducing the sum assured or increasing the premium.

This is what led to the changes proposed at the 2018, 2019 and 2020 policy reviews. Having undertaken the reviews, Aviva's assumptions were that the policy was unsustainable on its existing terms, and a higher level of premium was needed to maintain the policy's sum assured. This would undoubtedly have come as a surprise to Mr and Mrs H as there hadn't ever been any previous indication that the policy might need such significant changes.

But this shouldn't have been the case, taking into account the standards I've quoted above, I think that Aviva ought to have provided Mr and Mrs H with clear, fair and not misleading information about the policy to enable them to make an informed decision about the policy. Their communications should have included key details about the policy such as its performance, the value of its underlying fund and any fees, charges that had been applied and any options that could be taken to mitigate poor outcomes in the future.

They should have provided this information within a reasonable time frame, and at the very latest, within 12 months of the point when the costs of the policy overtook the premiums being paid in the policy year ending June 2006.

Having considered the communications sent to Mr and Mrs H, I haven't seen that this level of information was provided. The limited number of review letters I've been provided with gave some information such as a projection of how long the policy would support the sum assured. But they didn't provide any information about the specific costs of the policy and

how they were likely to increase in the future or the level of premium that might then be required to maintain the policy's sum assured. Because this level of information wasn't provided, I don't think Mr and Mrs H were put in an informed position about the policy or any possible steps they could take to mitigate future risks.

I've considered the likely course of action Mr and Mrs H would've taken if they'd been put in an informed position in 2006. Aviva should have explained that the costs of the policy were higher than the premiums being paid and while the policy wouldn't require any changes at that time, it would likely need changes in the future.

This could lead to a few different outcomes for Mr and Mrs H:

- They could surrender the policy and look elsewhere for cover.*
- They could keep the policy until changes were required and then surrender it.*
- They could keep the policy and potentially make changes if the terms of the policy allowed it, such as increasing their premium or reducing the sum assured, in order to mitigate future changes.*
- They could do nothing and accept any future changes.*

I've considered what Mr and Mrs H have said about their circumstances at the time in order to try and determine their likely course of action. They've said that while it's difficult to speculate on exactly they would've done, it's likely they would have gone to another provider to provide the same cover.

While I appreciate that they are making this statement with the benefit of hindsight, I think their point about finding an alternative policy with the same level of cover is key to determining their actions. A whole of life policy with a fixed sum assured and premiums would likely have been considerably more expensive than their existing policy. So, while it is possible that they might have surrendered the policy if they'd been put in an informed position in 2006, I must also consider the possibility that they wouldn't have found a policy with the same level of cover for a reasonable premium.

The question I then must ask is what they would have done in this scenario. This is difficult to answer as I don't know for certain what they would've done. What I do know for certain is that they didn't opt to take up any of the options to maintain the policy's sum assured by increasing their premiums at any of the failed reviews. I think this potentially shows that affordability was a real consideration for Mr and Mrs H and they didn't want to spend too much on a policy. So, on balance, it doesn't seem likely that they would've taken out a significantly more expensive policy, even it was non-reviewable.

This adds weight to the conclusion that they would've kept the policy until it needed changes. Based on the policy's review history, i.e. no changes were required until 2018, I don't think it's unreasonable to suggest that Aviva would have told Mr and Mrs H in 2006 that their policy wouldn't potentially need any changes for at least ten years.

Taking all this into account, I think that in a scenario where Mr and Mrs H were told that the reality of the situation was that their policy wouldn't provide a fixed sum assured for a fixed premium, and that the charges of their policy were higher than the premiums being paid, but no changes would be needed for potentially another ten years or so, it seems more likely than not that they would've kept the policy going until it needed changes.

I must stress that this is a finely balanced decision and there are arguments for keeping the

policy until changes were needed and also for surrendering it in 2006. But in my opinion, it seems more likely that Mr and Mrs H would have seen the benefit in keeping their premiums as low as possible for as long as possible. Therefore, I'm not persuaded that Mr and Mrs H would have surrendered the policy in 2006.

So, having considered everything, and subject to any further submissions from either party, I don't think this complaint should be upheld. Even though Aviva didn't provide Mr and Mrs H with sufficient information about their policy, I don't think that Mr and Mrs H would have taken a different course of action even if they had been put in an informed position."

Responses to my provisional decision

Aviva didn't provide any further comments. Mr and Mrs H didn't accept my findings, and I've summarised the points they made below:

- They were surprised that I hadn't addressed Aviva's dereliction of customer care. They should have been told that they needed to increase their premiums or reduce the policy's sum assured in order to make the policy sustainable. If they'd been made aware in 2009 of this issue, they would have made the necessary changes.
- They had been lulled into a false sense of security by Aviva's lack of information.
- Whilst they'd been told that the current sum assured wouldn't be reduced any further, they didn't trust that Aviva wouldn't make further changes given what had happened in the past.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I remain of the opinion that this complaint shouldn't be upheld. I appreciate Mr and Mrs H's disappointment with the current state of their policy and their comments around what they would have done in the past, this is why I've previously noted how finely balanced their complaint is.

I would like to reiterate that my opinion is that there has been a failing on Aviva's part here, so it isn't the case that I haven't found them at fault. I appreciate that I haven't told Aviva to provide compensation or pay redress, but this is based on what I think Mr and Mrs H would have done differently if Aviva had provided them with sufficient information about their policy in the past.

Mr and Mrs H had previously said that they would have surrendered the policy and looked elsewhere for cover. They've now made the point that they would have looked to amend either the policy's sum assured or premiums if they'd been provided with sufficient information.

I don't dispute that this is their current position on the matter, but I must take into account the benefit of hindsight. In my opinion, their actions in the past provide an indication of what they would've likely done. I think that their response to the failed reviews gives some insight into what they would have likely done in 2006. At the failed reviews in 2018 and 2020 they didn't look to increase their premiums and instead let the sum assured reduce, this leads me to believe they wouldn't have increased their premiums in the past.

I've also considered the likelihood that they would have reduced the sum assured in 2006 to

a level that would be sustainable for life based on their premiums of £62.85. I'm not able to accurately predict what the level of reduction would have been, but based on my experience of these types of policies, I think it's likely that it would've been significant. Their other option would've been to keep the £50,000 sum assured as long as possible with the knowledge that it would reduce at some point, but it would never fall below the minimum guaranteed level of £13,984.

Weighing both of these options up, I think it is more likely that they would've tried to keep the sum assured at £50,000 for as long as they could without increasing their premiums. So my opinion is that they are now in the position that they would've been in, had Aviva provided them with sufficient information about their policy. Therefore, and I appreciate this will come as a disappointment to Mr and Mrs H, I'm not going to ask Aviva to do anything to resolve this complaint.

I also appreciate that Mr and Mrs H are concerned that the sum assured may potentially reduce in the future. However, the sum assured is at the minimum guaranteed level, provided they continue to pay their premiums this sum cannot be reduced.

My final decision

For the reasons I've given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mrs H to accept or reject my decision before 30 December 2025.

Marc Purnell
Ombudsman